

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)(DFE)

of

NOTICE OF DEPOSITION

DONJON MARINE CO., INC. as
owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

Petitioner.

-----X
TO: RUBIN, FIORELLA & FRIEDMAN, LLP
292 Madison Avenue
New York, New York 10017

COUNSELORS:

PLEASE TAKE NOTICE that in accordance with Rule 30 of the Federal Rules of Civil Procedure, testimony will be taken by deposition upon oral examination before a Certified Shorthand Reporter of the State of New York, or other person authorized by the laws of the State of New York to administer oath, with respect to all matters relevant to the subject matter involved in this action, at which time you will please produce the following persons whose testimony is to be taken:

PARTY BEING DEPOSED: Each and every corporate officer, engineer, vessel officer, crew member and each and every other employee of Donjon Marine Co., Inc. who was present at Caddell Dry Dock from the time when the vessel was first delivered to Caddell Dry Dock through and including the date of the accident.

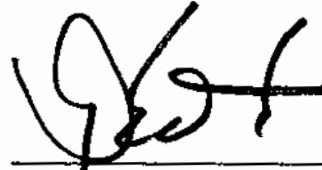
DATE: November 27, 2007

TIME: 10:00 A.M.

PLACE:

GORAYEB & ASSOCIATES, P.C.
100 William Street, Suite 1205
New York, New York 100038

Dated: New York, New York
November 19, 2007



Mark H. Edwards (ME 7106)
GORAYEB & ASSOCIATES, P.C.
Attorney for Respondent
DENNIS KIRBY
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222

STATE OF NEW YORK

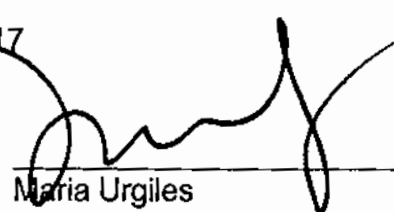
SS.: **AFFIDAVIT OF SERVICE**

COUNTY OF NEW YORK

I, Maria Urgiles, being duly sworn, depose and say: I am not a party to the action, am over 18 years of age, and reside in the County of Queens, State of New York.

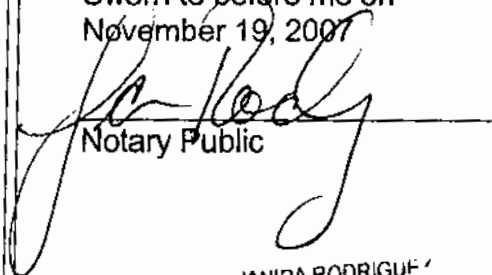
On November 19, 2007, I served the within **NOTICE OF DEPOSITION** to the Federal Express office location at 100 William Street, New York, New York, for overnight delivery service on the following attorneys:

RUBIN, FIORELLA & FRIEDMAN, LLP
292 Madison Avenue
New York, New York 10017



Maria Urgiles

Sworn to before me on
November 19, 2007



Notary Public

JANIRA RODRIGUEZ
Commissioner of Deeds, City of New York
No. 1-6659
Certificate Filed in New York County
Commission Expires Jan. 2, 2007
2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)(DFE)

of

DONJON MARINE CO., INC. as
owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

Petitioner.

RULE 30 NOTICE OF DEPOSITION

GORAYEB & ASSOCIATES, P.C.
Attorneys for Respondent DENNIS KIRBY
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222
FILE NO. 7401 - LL

EXHIBIT D

JANUARY 2007

NEW YORK, NY



NEW YORK, NY
LA GUARDIA AIRPORT (KLGA)

Lat: 40° 46' N Long: 73° 52' W Elev (Ground) 11 Feet

Time Zone : EASTERN WBAN: 14732 ISSN#: 0198-3644

JANUARY 2007

LOCAL CLIMATOLOGICAL DATA

NOAA, National Climatic Data Center



Temperature of										Deg Days BASE 65°		WEATHER	SNOW/ICE ON GND(IN)						PRECIPITATION ON GND(IN)		PRESSURE (INCHES OF HG)		WIND SPEED - MPH DIR - TENS OF DEGREES																																																																		
MAXIMUM		MINIMUM		AVERAGE		DEF FROM NORMAL		AVERAGE DEW PT		AVERAGE WET BULB			HEATING		COOLING		DEPTH	WATER EQUIV		SNOW- FALL		WATER EQUIV	LST	LST	LST	AVERAGE STATION	AVERAGE SEA LEVEL	RESULTANT SPEED	RES DIR	AVERAGE SPEED		MAXIMUM 5-SEC		2-MIN		DIR	Date																																																				
1	2	3	4	5	6	7	8	9	10	11	12		13	14	15	16		17	18	19	20									21	22	23	24																																																								
01	56	46	51	17	48	50	14	0	RA BR	0	0	0	0	29.85	29.88	3.9	20	8.6	26	18	20	30	01																																																																		
02	52	43	48	14	27	38	17	0		0	0	0	0	30.09	30.12	15.3	31	15.1	37	31	30	33	02																																																																		
03	53	39	46	12	27	39	19	0		0	0	0	0	30.28	30.31	9.7	23	10.0	24	23	20	24	03																																																																		
04	58	44	51	17	35	44	14	0	RA BR	0	0	0	0	30.12	30.15	8.9	23	9.1	20	22	16	24	04																																																																		
05	62	51	57	23	53	55	8	0		0	0	0	0	29.89	29.93	7.0	20	7.4	20	22	15	22	05																																																																		
06	72*	55	64*	31	50	56	1	0	RA BR	0	0	0	0	29.71	29.75	11.6	26	14.1	35	30	28	30	06																																																																		
07	56	46	51	18	31	41	14	0	RA BR	0	0	0	0	30.19	30.21	1.4	32	10.6	32	32	28	30	07																																																																		
08	57	40	49	16	37	44	16	0	RA BR	0	0	0	0	29.65	29.68	7.7	26	14.9	39	28	31	28	08																																																																		
09	45	37	41	8	20	33	24	0		0	0	0	0	29.79	29.82	13.9	27	14.8	30	26	25	26	09																																																																		
10	38	31	35	2	14	28	30	0		0	0	0	0	30.11	30.14	17.8	31	18.1	35	33	29	32	10																																																																		
11	41	29	35	2	15	28	30	0		0	0	0	0	30.53	30.56	6.0	25	9.4	25	28	22	29	11																																																																		
12	50	39	45	12	29	38	20	0	RA	0	0	0	0	30.32	30.35	11.3	23	11.4	25	23	21	24	12																																																																		
13	57	46	52	20	44	48	13	0	RA DZ	0	0	0	0	30.16	30.19	3.9	24	8.3	17	25	13	24	13																																																																		
14	46	42	44	12	41	43	21	0	RA DZ FG+ FG BR	0	0	0	0	30.18	30.21	8.4	05	8.7	18	05	16	06	14																																																																		
15	51	41	46	14	41	43	19	0	RA DZ FG+ BR HZ	0	0	0	0	29.93	29.94	6.4	07	6.9	21	05	17	06	15																																																																		
16	57	25	41	9	24	34	24	0	RA	0	0	0	0	29.97	30.01	18.2	32	18.8	37	33	31	34	16																																																																		
17	31	21	26	-6	6	20	39	0	RA SN BR UP	0	0	0	0	30.60	30.63	11.8	33	13.2	39	32	31	32	17																																																																		
18	38	25	32	0	22	29	33	0	SN BR	0	0	0	0	30.41	30.46	2.9	11	4.4	15	13	13	32	18																																																																		
19	43	33	38	6	25	33	27	0	SN	0	0	0	0	29.80	29.83	13.1	29	13.8	43	30	33	31	19																																																																		
20	35	23	29	-3	11	24	36	0	SN	0	0	0	0	29.96	30.01	23.1	31	24.0	44*	31	36*	33	20																																																																		
21	31	21	26	-6	4	20	39	0		0	0	0	0	30.28	30.31	6.2	32	7.9	31	31	25	31	21																																																																		
22	34	28	31	-1	21	28	34	0	SN	0	0	0	0	29.89	29.92	1.8	06	5.4	15	07	12	06	22																																																																		
23	38	30	34	2	18	29	31	0		0	0	0	0	29.84	29.87	12.2	31	13.2	26	32	32	32	23																																																																		
24	40	34	37	5	19	31	28	0	SN	0	0	0	0	29.91	29.94	11.8	31	12.3	26	30	21	29	24																																																																		
25	37	17	27	-5	13	25	38	0		0	0	0	0	29.82	29.84	12.1	34	13.9	37	31	28	32	25																																																																		
26	24	11*	18*	-14	0	14	47	0		0	0	0	0	29.94	29.97	17.8	31	18.6	38	30	28	30	26																																																																		
27	41	22	32	0	14	26	33	0	RA SN HZ	0	0	0	0	29.76	29.79	4.3	23	5.5	16	22	13	22	27																																																																		
28	43	32	38	6	25	34	27	0	SN	0	0	0	0	29.61	29.64	2.4	34	8.0	21	01	18	03	28																																																																		
29	32	24	28	-4	10	23	37	0	SN	0	0	0	0	29.79	29.86	15.4	32	17.3	37	32	29	32	29																																																																		
30	37	23	30	-2	13	25	35	0	SN	0	0	0	0	29.91	29.94	10.3	26	11.1	26	27	20	26	30																																																																		
31	34	27	31	-1	13	25	34	0	SN	0	0	0	0	29.94	30.01	13.0	30	14.3	31	34	24	32	31																																																																		
44.8		33.1	39.0	6.4		24.2	33.8	25.9	0.0	< MONTHLY AVERAGES		TOTALS >		30.01	30.04	7.2	30	11.9	< MONTHLY AVERAGES																																																																						
6.2		6.6	6.4	6.4		6.4		6.4		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL																																																																			
6.2		6.6	6.4	6.4		6.4		6.4		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL		DEPARTURE FROM NORMAL																																																																			
DEGREE DAYS										GREATEST 24-HR PRECIPITATION: 1.34										DATE: 07-08										SEA LEVEL PRESSURE										DATE										TIME																																							
MONTHLY										GREATEST 24-HR SNOWFALL: 0.5										DATE: 19										MAXIMUM: 30.75										DATE										TIME																																							
TOTAL DEPARTURE										GREATEST SNOW DEPTH: T										DATE: 31+										MINIMUM: 29.53										DATE										TIME																																							
TOTAL DEPARTURE										NUMBER OF -> DAYS WITH										MAXIMUM TEMP >= 90: 0										MINIMUM TEMP <= 32: 4										PRECIPITATION >= 0.01 INCH: 14										PRECIPITATION >= 0.10 INCH: 3										SNOWFALL >= 1.0 INCH: 0																													
HEATING: 802										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE																			
COOLING: 0										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE									
COOLING: 0										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE										TOTAL DEPARTURE									

DEGREE DAYS

MONTHLY		SEASON TO DATE	
TOTAL	DEPARTURE	TOTAL	DEPARTURE
802	-206	1965	-694
HEATING:	0	0	0
COOLING:	0	0	0

SUNSHINE, CLOUD, & VISIBILITY TABLES ON PAGE 3

SEA LEVEL PRESSURE		DATE	
MAXIMUM:	MINIMUM:	17	2251
30.75	29.53	08	1051
PRECIPITATION >= 0.01 INCH:		PRECIPITATION >= 0.10 INCH:	
14	3	0	0
SNOWFALL >= 1.0 INCH		SNOWFALL >= 1.0 INCH	
0	0	0	0

HOURLY PRECIPITATION (WATER EQUIVALENT IN INCHES)

NEW YORK, NY (KLGA)
JANUARY 2007

WBAN # 14732

Date	FOR HOUR (LST) ENDING AT												FOR HOUR (LST) ENDING AT												Sum of Hourly Data	Date	2400 LST Water Equiv.	
	1	2	3	4	5	6	7	8	9	10	11	12	Date	13	14	15	16	17	18	19	20	21	22	23				24
01		T	0.02	0.08	0.03	0.03	0.17	0.40	0.27	0.17	0.07	0.02	01	0.01	0.01	0.02	0.03	T				T				01	1.33	
02													02													02	0.00	
03													03													03	0.00	
04													04													04	0.00	
05													05	0.01	0.02	T										05	0.04	
06	0.04	T				T	T						06													06	0.04	
07													07								0.01	0.03	0.02	0.09		07	0.15	
08	0.15	0.24	0.11	0.20	0.02	0.01	0.10	0.11	0.06	0.04	0.02	0.05	08	0.07	0.01											08	1.19	
09													09													09	0.00	
10													10													10	0.00	
11													11													11	0.00	
12													12													12	T	
13													13	T	0.01	T	T									13	0.03	
14	T	0.01	0.02			0.01	0.01	T	0.01	T	T	T	14	T							T	T	T			14	0.05	
15	0.01					0.01	T	T	T	T	T	T	15													15	0.02	
16							T						16													16	T	
17													17													17	0.00	
18													18													18	0.09	
19													19								T	T				19	0.05	
20													20							0.02	T					20	T	
21													21													21	0.00	
22													22													22	T	
23													23													23	0.00	
24													24													24	0.00	
25													25													25	T	
26													26													26	0.00	
27													27													27	T	
28	0.01	0.01	0.02	T									28								T	0.02	0.02	T		28	0.08	
29	0.02	T											29													29	0.02	
30													30													30	0.04	
31	0.04												31								T		0.04			31	0.04	

* Indicates sum of Hourly and Daily disagree.

MAXIMUM SHORT DURATION PRECIPITATION (See Note)

Time Period (Minutes)	5	10	15	20	30	45	60	80	100	120	150	180
Precipitation (Inches)												
Ending Date												
Ending Time (Hr/Min)												

Date and time are not entered for TRACE amounts.

Note : The hourly and daily precipitation totals are printed in the last 2 columns and highlighted in red when they disagree. NWS does not edit ASOS hourly values but may edit daily and monthly totals. Hourly, daily, and monthly totals are printed as reported by the ASOS site.

REFERENCE NOTES & SUPPLEMENTAL SUMMARIES

* = Extreme for the month (last occurrence if more than one).

T = Trace precipitation amount.

+ = also occurs on earlier date.

FG+ = Heavy fog, visibility .25 miles or less.

BLANK entries denote missing or unreported data.

Resultant wind is the vector sum of the wind speeds and directions divided by the number of observations.

Wind direction is recorded in tens of degrees (2 digits) clockwise from true north. '00' = calm, 'VR' = variable.

Precipitation is for the 24-hour period ending at the time indicated in the column heading.

Water Equivalent of snow on the ground is reported only when the depth is 2 or more inches.

NORMALS ARE FOR THE YEARS 1971-2000

WEATHER NOTATIONS

QUALIFIER	WEATHER PHENOMENA			
	PRECIPITATION	OBSCURATION	OTHER	
BC Patches	DZ Drizzle	BR Mist	DS Duststorm	
BL Blowing	GR Hail	DU Widespread Dust	FC Funnel Cloud	
DR Low Drifting	GS Small Hail and/or Snow Pellets	FG Fog	+FC Tornado Waterspout	
FZ Freezing	IC Ice Crystals	FU Smoke	PO Well Developed Dust/Sand Whirls	
MI Shallow	PL Ice Pellets	HZ Haze		
PR Partial	RA Rain	PY Spray	SQ Squalls	
SH Shower(s)	SG Snow Grains	SA Sand	SS Sandstorm	
TS Thunderstorm	SN Snow	VA Volcanic Ash	CL Glaze	
VC In the Vicinity	UP Unknown Precipitation			

Intensity (as indicated on pages 4 to 6):

'+' = Heavy '•' = Moderate '••' = Light

NEW YORK, NY JANUARY 2007

Ceiliometer (30-second) data are used to derive cloudiness at or below 12,000 feet. This cloudiness is the mean cloud cover detected during sunrise to sunset (SR-SS), or midnight to midnight (MN-MN).

Satellite data are used to derive cloudiness above 12,000 feet. Effective Cloud Amount is based on the cloud cover and the transparency of the clouds within the satellite field of view (approx. 31x31 miles).

Sky Condition is based on the sum (not to exceed 8) of the sunrise to sunset cloud cover below and above 12,000 feet. Both ceilometer and satellite data must be present to compute Sky Condition. Clear = 0-2 oktas, Partly Cloudy = 3-6 oktas, Cloudy = 7-8 oktas.

A Heating (Cooling) Degree Day is the difference between the average daily temperature and 65 degrees F. The HDD season begins July 1, the CDD season begins January 1.

Dew Point is the temperature to which the air must be cooled to achieve 100% relative humidity. Wet Bulb is the temperature the air would have if cooled to saturation at constant pressure by evaporation of water into it.

Snow Depth, Snowfall, and Sunshine data may come from nearby sites that the National Weather Service deems Climatologically representative of this site.

ADDITIONAL NOTES:

Station Augmentation-FAA CWO

Lat/Lon: / Elevation:

Distance: 1.2 Mi Dir: SSE

Augmented Elements: Temp, Precip, Snow

Equipment: PSY, SRG, Snowboard

Date	SUNSHINE		CLOUDINESS (OKTAS)				VISIBILITY (MILES)		RESERVED
	TOTAL MINUTES	PERCENT POSSIBLE	SP-SS		MN-MN	MINIMUM	MAXIMUM		
			Sky Cover	Satellite					
01							1.25	10.00	
02							10.00	10.00	
03							10.00	10.00	
04							10.00	10.00	
05							2.00	10.00	
06							2.00	10.00	
07							6.00	10.00	
08							2.00	10.00	
09							10.00	10.00	
10							10.00	10.00	
11							10.00	10.00	
12							10.00	10.00	
13							7.00	10.00	
14							0.00	8.00	
15							0.12	10.00	
16							8.00	10.00	
17							10.00	10.00	
18							1.50	10.00	
19							1.50	10.00	
20							6.00	10.00	
21							10.00	10.00	
22							9.00	10.00	
23							10.00	10.00	
24							10.00	10.00	
25							5.00	10.00	
26							10.00	10.00	
27							8.00	10.00	
28							1.50	10.00	
29							5.00	10.00	
30							1.00	10.00	
31							3.00	10.00	
MONTHLY AVGS							6.12	9.94	
SUNSHINE (Minutes)									
Total : Possible :									
Percent Possible :									
NUMBER OF DAYS WITH :									
SKY CONDITION									
Clear Partly CLDY Cloudy Missing									
MINIMUM VISIBILITY (MILES)									
<= .25 <= 3.0 >= 7.0									
2 11 16									

OBSERVATIONS AT 3-HOURLY INTERVALS

NEW YORK, NY
JANUARY 2007 KLG

WBAN #14732

WBAN # 14732																				
KLGA																				
JANUARY 2007																				
HOUR (LST)	SKY COVER	CEILING 100's of FT.	WEATHER	TEMPERATURE of		WIND SPEED (MPH)	WIND DIRECTION	PRESSURE (INCHES, HG)		SEA LEVEL	STATION	PRESSURE (INCHES, HG)								
				DRY BULB	WET BULB															
JAN 01																				
SUNRISE: 0716				SUNSET: 1635				SUNSET: 1641												
01	OVC	044	-RA	47	35	42	63	30.19	30.22	30.03	30.06									
04	OVC	031	-RA	48	43	46	83	30.08	30.11	30.15	30.17									
07	OVC	008	-RA	52	49	50	90	29.97	30.00	30.25	30.28									
10	OVC	045	-RA	54	52	53	93	29.91	29.94	30.31	30.34									
13	OVC	012	-RA	55	52	53	90	29.77	29.80	30.25	30.28									
16	OVC	005	-RA	55	53	54	93	29.66	29.69	30.25	30.28									
19	OVC	007	-RA	54	52	53	93	29.68	29.71	30.20	30.23									
22	OVC	065	BR	53	46	49	77	29.68	29.71	30.11	30.14									
JAN 02																				
SUNRISE: 0716				SUNSET: 1636				SUNSET: 1642												
01	BKN	100	-RA	50	39	45	66	29.75	29.78	29.88	29.91									
04	FEW	070	-RA	48	34	42	59	29.83	29.85	29.71	29.74									
07	FEW	032	-RA	47	31	40	54	29.93	29.96	29.61	29.64									
10	FEW	045	-RA	44	24	36	45	30.09	30.12	29.54	29.56									
13	CLR	NC	-RA	46	23	37	40	30.12	30.14	29.54	29.57									
16	CLR	NC	-RA	46	22	37	39	30.20	30.23	29.55	29.58									
19	CLR	NC	-RA	46	24	37	42	30.29	30.31	29.74	29.77									
22	CLR	NC	-RA	45	22	36	40	30.33	30.36	29.77	29.79									
JAN 03																				
SUNRISE: 0716				SUNSET: 1637				SUNSET: 1643												
01	CLR	NC	-RA	44	22	36	42	30.33	30.36	29.77	29.80									
04	CLR	NC	-RA	41	24	35	51	30.36	30.39	29.80	29.83									
07	BKN	250	-RA	40	26	35	57	30.36	30.39	29.81	29.84									
10	BKN	250	-RA	43	26	36	51	30.36	30.38	29.85	29.87									
13	SCT	250	-RA	49	25	39	39	30.26	30.29	29.75	29.77									
16	BKN	250	-RA	53	29	43	40	30.20	30.23	29.79	29.82									
19	BKN	250	-RA	51	32	43	48	30.21	30.24	29.79	29.82									
22	BKN	250	-RA	49	32	42	52	30.21	30.24	29.82	29.85									
JAN 04																				
SUNRISE: 0716				SUNSET: 1638				SUNSET: 1644												
01	SCT	250	-RA	48	32	41	54	30.17	30.20	29.83	29.86									
04	SCT	250	-RA	44	33	39	65	30.17	30.19	29.88	29.91									
07	BKN	250	-RA	45	32	40	63	30.16	30.19	29.97	30.00									
10	BKN	250	-RA	47	36	42	66	30.16	30.19	30.06	30.09									
13	SCT	250	-RA	52	35	44	53	30.10	30.13	30.09	30.11									
16	BKN	250	-RA	58	36	48	44	30.07	30.10	30.16	30.19									
19	BKN	250	-RA	55	37	47	51	30.10	30.13	30.30	30.33									
22	BKN	250	-RA	54	36	46	51	30.07	30.10	30.39	30.42									
JAN 05																				
SUNRISE: 0716				SUNSET: 1639				SUNSET: 1645												
01	BKN	250	-RA	51	42	47	71	30.00	30.03	30.43	30.46									
04	BKN	250	-RA	53	47	50	80	29.97	29.99	30.50	30.52									
07	OVC	045	-RA	56	49	52	78	29.94	29.97	30.57	30.60									
10	OVC	140	-RA	61	53	57	75	29.95	29.98	30.63	30.65									
13	OVC	040	-RA	62	56	59	81	29.89	29.92	30.59	30.62									
16	OVC	010	-RA	61	57	59	87	29.86	29.89	30.54	30.56									
19	OVC	006	-RA	62	58	60	87	29.87	29.90	30.53	30.55									
22	OVC	002	-RA	57	55	56	93	29.83	29.85	30.50	30.53									
JAN 06																				
SUNRISE: 0716				SUNSET: 1640				SUNSET: 1646												
01	OVC	003	-RA	58	56	57	93	29.76	29.79	30.44	30.47									
04	OVC	025	-RA	56	54	55	93	29.70	29.73	30.38	30.41									
07	OVC	022	-RA	57	55	56	93	29.65	29.68	30.37	30.40									
10	BKN	060	-RA	67	61	63	81	29.65	29.67	30.37	30.40									
13	BKN	060	-RA	71	54	61	55	29.58	29.61	30.28	30.31									
16	SCT	050	-RA	70	47	57	44	29.65	29.68	30.32	30.35									
19	SCT	075	-RA	65	40	52	40	29.80	29.83	30.27	30.30									
22	FEW	080	-RA	60	39	50	46	29.90	29.93	30.27	30.29									

NEW YORK, NY
JANUARY 2007

OBSERVATIONS AT 3-HOURLY INTERVALS

KLGA

WBAN # 14732

JANUARY 2007													KLGA													WBAN # 14732												
HOUR (LST)	SKY COVER	CEILING 100's of FT.	SATELLITE		VISIBILITY (MILES)	WEATHER	TEMPERATURE °F				WIND SPEED (MPH)	WIND DIRECTION	Tens of Deg	STATION PRESSURE (INCHES, HG)	SEA LEVEL	HOUR (LST)	SKY COVER	CEILING 100's of FT.	SATELLITE		VISIBILITY (MILES)	WEATHER	TEMPERATURE °F				WIND SPEED (MPH)	WIND DIRECTION	Tens of Deg	STATION PRESSURE (INCHES, HG)	SEA LEVEL							
			Observation	Time (LST)			Eff Clid Amt	OKtas	Dry Bulb	Wet Bulb									Relative Humidity (PCT)	Dry Bulb			Wet Bulb	Relative Humidity (PCT)														
JAN 25																																						
SUNRISE: 0708																																						
01	OVC	070			10.00		36	20	30	52	7	105		29.88	29.91	01	OVC	025			3.00	-SN			32	27	30	82	6	33		29.80	29.83					
04	OVC	075			10.00		33	21	29	61	6	104		29.84	29.87	04	OVC	100			10.00			30	21	27	69	11	33		29.85	29.88						
07	OVC	030			9.00		29	22	27	75	10	03		29.85	29.88	07	BKN	250			10.00			28	16	24	61	16	33		29.92	29.95						
10	BKN	110			10.00		32	20	28	61	9	33		29.82	29.84	10	FEW	035			10.00			29	13	24	51	17	31		30.00	30.03						
13	BKN	090			9.00	-SN	33	18	28	54	15	32		29.74	29.77	13	FEW	040			10.00			33	10	26	38	21	32		30.00	30.02						
16	SCT	140			10.00		32	8	25	36	17	32		29.74	29.77	16	SCT	250			10.00			34	7	26	32	16	27		30.00	30.02						
19	CLR	NC			10.00		28	6	22	39	23	32		29.81	29.83	19	BKN	250			10.00			31	8	24	38	10	28		30.07	30.10						
22	CLR	NC			10.00		21	1	16	41	23	35		29.84	29.86	22	SCT	250			10.00			29	8	23	41	13	29		30.09	30.12						
JAN 26																																						
SUNRISE: 0707																																						
01	OVC	070			10.00		36	20	30	52	7	105		29.88	29.91	01	OVC	025			3.00	-SN			32	27	30	82	6	33		29.80	29.83					
04	OVC	075			10.00		33	21	29	61	6	104		29.84	29.87	04	OVC	100			10.00			30	21	27	69	11	33		29.85	29.88						
07	OVC	030			9.00		29	22	27	75	10	03		29.85	29.88	07	BKN	250			10.00			28	16	24	61	16	33		29.92	29.95						
10	BKN	110			10.00		32	20	28	61	9	33		29.82	29.84	10	FEW	035			10.00			29	13	24	51	17	31		30.00	30.03						
13	BKN	090			9.00	-SN	33	18	28	54	15	32		29.74	29.77	13	FEW	040			10.00			33	10	26	38	21	32		30.00	30.02						
16	SCT	140			10.00		32	8	25	36	17	32		29.74	29.77	16	SCT	250			10.00			34	7	26	32	16	27		30.00	30.02						
19	CLR	NC			10.00		28	6	22	39	23	32		29.81	29.83	19	BKN	250			10.00			31	8	24	38	10	28		30.07	30.10						
22	CLR	NC			10.00		21	1	16	41	23	35		29.84	29.86	22	SCT	250			10.00			29	8	23	41	13	29		30.09	30.12						

3-HOURLY OBSERVATION NOTES

Sky Cover is the amount of the sky obscured. CLR or SKC = 0, FEW = 1/8-2/8, SCT = 3/8-4/8, BKN = 5/8-7/8, OVC = 8/8, W = Vertical Visibility = 8/8

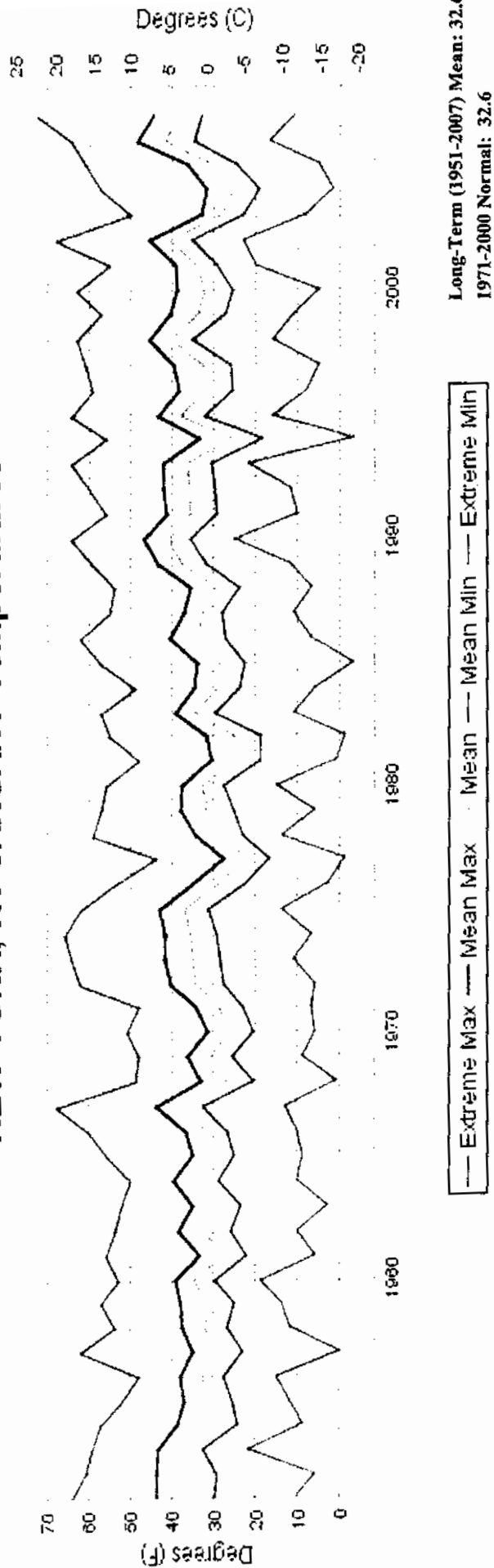
Ceiling is reported in hundreds of feet above ground level for clouds at or below 12,000 feet.
NC = No Ceiling detected.

& = Original observation contained additional weather elements.
See page 3 for additional notes.

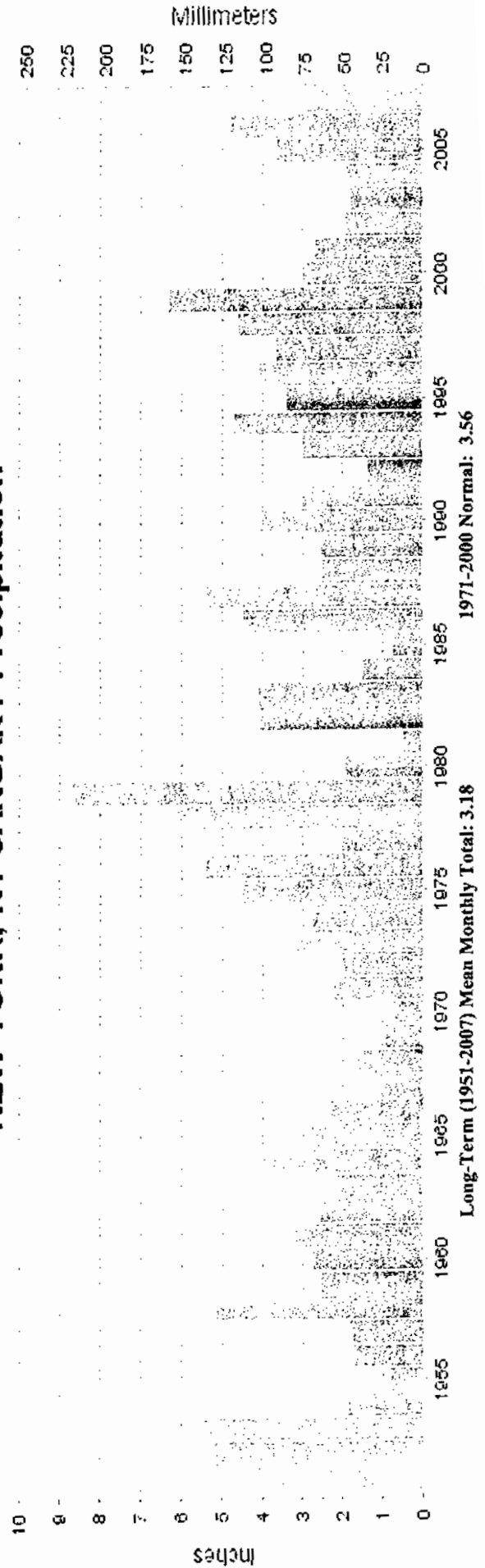
SUMMARY BY HOUR

HOUR (LST)	CEILOMETER	EFF CLD AMT	DRY BULB	WET BULB	RELATIVE HUMIDITY	STATION PRESSURE (Inches, HG)	SEA LEVEL	VISIBILITY (Miles)	WIND SPEED (MPH)	WIND DIRECTION	RESULTANT WIND (MPH)
01			38	34	61	30.02	30.04	8.45	12	6	30
02			38	33	62	30.02	30.04	8.90	12	6	30
03			37	33	63	30.01	30.04	9.26	11	6	30
04			37	33	63	30.01	30.04	9.35	11	6	30
05			37	33	63	30.01	30.04	9.32	12	6	30
06			37	33	63	30.02	30.04	8.94	12	5	30
07			37	33	64	30.03	30.05	8.58	11	6	30
08			36	32	63	30.03	30.06	8.66	11	6	30
09			37	33	62	30.04	30.07	8.84	12	7	30
10			38	34	59	30.04	30.07	9.06	12	8	29
11			40	34	56	30.03	30.06	9.23	13	9	29
12			41	35	53	30.01	30.03	9.10	13	10	29
13			41	35	52	29.98	30.01	8.85	13	9	29
14			42	35	50	29.97	30.00	8.96	13	8	29
15			42	35	49	29.97	30.00	9.02	13	9	29
16			42	35	49	29.98	30.00	8.76	13	9	29
17			41	35	50	29.99	30.02	8.76	12	9	29
18			41	35	52	30.01	30.04	8.98	11	9	29
19			41	35	53	30.02	30.05	8.98	11	8	29
20			40	34	54	30.02	30.05	9.03	12	8	29
21			39	33	55	30.02	30.05	8.98	11	7	30
22			38	33	57	30.03	30.06	8.76	11	7	30
23			38	33	58	30.02	30.05	8.61	12	7	30

NEW YORK, NY JANUARY Temperatures



NEW YORK, NY JANUARY Precipitation





JANUARY 2007
NEW YORK, NY

LOCAL CLIMATOLOGICAL DATA NOAA, National Climatic Data Center

I certify that this is an official publication of the National Oceanic and Atmospheric Administration (NOAA). It is compiled using information from weather observing sites operated by NOAA-National Weather Service / Department Of Transportation-Federal Aviation Administration and received at the National Climatic Data Center (NCDC), Asheville, North Carolina 28801.

DIRECTOR

NCDC now offers an annual online subscription for the **Edited Local Climatological Data Publication**. When you purchase this subscription service, you will have **immediate online access** to all previous publications back to July 1996 and all publications thereafter until the expiration of the subscription. Your subscription is valid for one year after purchase. **The total cost for online delivery (including back issues) is significantly less than the cost for offline delivery.**

To order this and other subscriptions online with your credit card, go to: www.ncdc.noaa.gov and choose subscriptions.

We welcome your questions or comments, please contact us at:

Toll Free Number (866) 742-3322 (voice)

Fax Number : (304) 726-4409

TDD : (828) 271-4010

or Email : ncdc.info@noaa.gov

Local Climatological Data is available at www.ncdc.noaa.gov

United States
Department of Commerce

National Oceanic and
Atmospheric Administration

National Environmental Satellite
Atmospheric Administration

For address correction, please return a photocopy of this page to Subscription Services indicating changes

NCDC Subscription Services Center
310 State Route 956 Building 300
Rocket Center, WV 26726

OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE \$300

FIRST CLASS
POSTAGE AND FEES PAID
NOAA
PERMIT G-19

EXHIBIT E

Mark H. Edwards (ME7106)
GORAYEB & ASSOCIATES, P.C.
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222
Attorneys for Respondent
DENNIS KIRBY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

07 CIV 3840 (RWS)

of

**RESPONSE TO
RULE 56.1 STATEMENT
OF UNDISPUTED
MATERIAL FACTS**

DONJON MARINE CO., INC., as Owner
Of Tug WILLIAM E. for Exoneration from
or Limitation of Liability,

Petitioner.

Respondent/Claimant, DENNIS KIRBY, by his attorney, GORAYEB &
ASSOCIATES, P.C., as and for his Local Rule 56.1 Response to Statement of
Undisputed Material Facts states as follows:

1. Admits.
2. Admits that Caddell Dry Dock and Repair Co., Inc. is a full service vessel repair facility with 6-dry docks located on the waterfront. (See, Kalil Affidavit)
3. Admits.
4. Admits.
5. Admits.
6. Admits.

7. Denies. (See, Affidavit of Dennis Kirby). Also, this statement contains no citation to evidence in violation of FRCP 56(e) and Local Civil Rule 56.1.

8. Admits.

9. Admits.

10. Admits.

11. Admits.

12. Admits.

13. Admits.

Dated: New York, New York
January 3, 2008

GORAYEB & ASSOCIATES, P.C.
Attorney for Respondent
DENNIS KIRBY

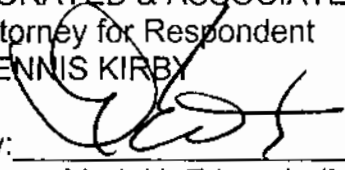
By: 
Mark H. Edwards (ME 7106)
100 William Street, Suite 1205
New York, New York 10017
(212) 267-9222
Our File No: 7401

EXHIBIT F

Mark H. Edwards (ME 7106)
GORAYEB & ASSOCIATES, P.C.
Attorney for Claimant/Respondent
DENNIS KIRBY
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)(DFE)

of

**PROPOSED AMENDED
CLAIM OF RESPONDENT
DENNIS KIRBY AND
ANSWER TO PETITIONER'S
VERIFIED COMPLAINT**

DONJON MARINE CO., INC. as
owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

A JURY TRIAL IS DEMANDED

Petitioner.

-----X

Claimant/Respondent, DENNIS KIRBY, by his attorney, Gorayeb &
Associates, P.C., as and for his Claim and Answer to the Verified Complaint for
Exoneration from or Limitation of Liability of Petitioner, DONJON MARINE CO.,
INC., alleges, upon information and belief, as follows:

CLAIM

1. That on January 31, 2007, Petitioner DONJON MARINE CO., INC.
owned the Tug, "William E."
2. On January 31, 2007, the "William E." was in dry dock at Caddell Dry
Dock and Repair Co., Inc., located at or about Dry Dock 3, at Richmond Terrace
and Broadway, Staten Island, New York, for renovation, sandblasting, painting,

alteration, repair and/or other and/or additional work, labor and services.

3. On January 31, 2007, DENNIS KIRBY, an employee of Caddell Dry Dock and Repair Co., Inc., was performing local land-based sandblasting of said "William E." in connection with said work.

4. The work that DENNIS KIRBY was performing on the "William E." constituted work on a "structure" pursuant to the substantive law of the State of New York.

5. During the performance of his work on January 31, 2007, DENNIS KIRBY was required to work at an elevated height and in the process was required to use a ladder to perform said work.

6. That Petitioner knew and/or should have known that DENNIS KIRBY would be required to work at a significant elevated height in order to perform the required work and that proper safety equipment and procedures would be required to perform said work, which were not provided to him.

7. On January 31, 2007, while performing said work at a significant elevated height on a ladder, the ladder moved and caused DENNIS KIRBY to fall to the ground and sustain serious personal injuries and was otherwise damaged. The ladder upon which he was working failed to prevent, or break his fall.

8. DENNIS KIRBY was injured as a result of and including but not limited to the privity, knowledge, negligence (based on 33 U.S.C. 905(b), 33 U.S.C. 933, federal common law negligence and state common law negligence) and strict liability of Petitioner, its, agents, servants and/or employees, Petitioner's violation of Rule 23 of the Industrial Code of the State of New York [12 NYCRR 23] and

Petitioner's violation of Sections 200, 240(1) and 241(6) of the Labor Law of the State of New York and/or the violation of other applicable statutes, rules and industry standards.

9. DENNIS KIRBY has sustained serious personal injuries, including those physical, mental and emotional in nature and has otherwise been damaged for which he seeks past and future compensation in a monetary amount to be determined by the trier of fact and he demands judgment thereon, together with interest, costs and disbursements.

10. Claimant DENNIS KIRBY makes this claim with a reservation of rights and without waiver of his right to proceed against Petitioner in his prior pending suit [07 Civ. 3742 (RWS)] against Petitioner, upon such terms as the Court deems proper and just.

ANSWER TO COMPLAINT

11. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations of Paragraph "1," and respectfully refers questions of law to the Court.

12. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations of Paragraph "2," except admits that DONJON MARINE CO., INC. has an office and place of business at 1250 Liberty Avenue, Hillside, New Jersey.

13. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations of Paragraph "3," except admits that

Petitioner was the owner of the Tug "William E." on January 31, 2007.

14. Answering Claimant/Respondent admits that Petitioner was served with the State Court action as alleged in Paragraph "4."

15. Answering Claimant/Respondent admits the allegations contained in Paragraph "5," to the extent that they refer to DENNIS KIRBY.

16. Answering Claimant/Respondent denies the allegations contained in Paragraph "6."

17. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "7" as to the value of the Tug "William E.," but admits that Claimant/Respondent's claim(s) for injury(s) and damages will exceed the value of \$95,000.

18. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "8" as to the value of the Tug "William E.," but admits that a purported and conclusory statement has been submitted from an alleged marine consultant that appears to be an appraisal.

19. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "9" as to the value of the Tug "William E.," and further denies knowledge and information sufficient to form a belief that \$95,000 is not less than Petitioner's interest in said Tug and further denies knowledge and information sufficient to form a belief as to the absence of pending freight.

20. Answering Claimant/Respondent admits Paragraph "10" that venue is

proper.

21. Answering Claimant/Respondent denies the allegations contained in Paragraph "11," as to DENNIS KIRBY, and further denies knowledge and information sufficient to form a belief as to the remaining allegations contained therein and respectfully refers questions of law to the Court.

22. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "12," and Petitioner's entitlement thereto and respectfully refers questions of law to the Court.

23. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "13," and respectfully refers questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

24. The Complaint fails to state a cause of action and/or petitioner is not entitled to the relief requested.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

25. In addition to the negligence claims based on 33 U.S.C. 905(b), 33 U.S.C. 933 and federal common law standards, the substantive law of the State of New York is applicable to, including Petitioner's violation of Rule 23 of the Industrial Code of the State of New York [12 NYCRR 23] and Petitioner's violation of Sections 200, 240(1) and 241(6) of the Labor Law of the State of New York and/or the violation of other applicable statutes, rules and industry standards

WHEREFORE, it is respectfully requested that DENNIS KIRBY be compensated in a monetary amount commensurate with the injuries and damages that he sustained, to be determined by the trier of fact, and that judgment be entered thereon and further, that Petitioner's Complaint be dismissed in its entirety as against DENNIS KIRBY.

Dated: New York, NY
January 3, 2008

GORAYEB & ASSOCIATES, P.C.
Attorney for DENNIS KIRBY

BY: 

Mark H. Edwards (ME 7106)
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222
File No.: 7401-LL/MU

TO: RUBIN, FIORELLA & FRIEDMAN LLP
Attorney for DONJON MARINE CO., INC.
292 Madison Avenue
New York, New York 10017
(212) 953-2381
File No.: 609-8731

VERIFICATION

MARK H. EDWARDS, an attorney at law, duly admitted to practice in the Courts of this State, affirms under the penalties of perjury that:

I am associated with the law firm of GORAYEB & ASSOCIATES, P.C., attorney for the claimant and respondent in the above entitled action; that affirmant has read the foregoing **PROPOSED AMENDED CLAIM and ANSWER** and knows the contents thereof; that the same is true to affirmant's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters affirmant believes it to be true and the reason that this verification is not made by claimant/respondent and is made by affirmant is that claimant and respondent is not presently in the county where the attorney for the claimant and respondent has its office.

Affirmant further says that the source of affirmant's information and the grounds of Affirmant's belief as to all matters not stated upon affirmant's knowledge are from investigations made on behalf of said claimant and respondent.

Dated: New York, New York
January 3, 2008



MARK H. EDWARDS (ME 7106)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
DENNIS KIRBY,

Plaintiff,

-against-

DONJON MARINE CO., INC.,

Defendant.
-----X

**PROPOSED AMENDED
VERIFIED COMPLAINT**

Index No.:

Plaintiff, **DENNIS KIRBY**, by his attorney, **GORAYEB & ASSOCIATES, P.C.**,
complaining of the defendant, respectfully alleges, upon information and belief, as
follows:

1. That plaintiff was and still is a resident of the State of New York, County of Bronx.
2. That this action falls within one or more of the exemptions set forth in CPLR §1602.
3. That at all times hereinafter mentioned, the defendant, **DONJON MARINE CO., INC.** (hereinafter "**DONJON**"), was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.
4. That at all times hereinafter mentioned, **DONJON**, was and still is a partnership organized and existing under and by virtue of the Laws of the State of New York.
5. That at all times hereinafter mentioned, and upon information and belief, **DONJON**, was and still is a foreign corporation authorized to do business under and by virtue of the Laws of the State of New York.
6. That at all times hereinafter mentioned, and upon information and belief, **DONJON**, maintained a principal place of business in the State of New Jersey

with its principle place of business at 1250 Liberty Avenue, Hillside, New Jersey 07205.

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF DENNIS KIRBY**

7. Plaintiff, **DENNIS KIRBY**, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "6" together with the same force and effect as though same were more fully set forth at length herein.
8. That on January 31, 2007, **DONJON**, owned the property located at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
9. That on January 31, 2007, **DONJON** owned a vessel known as or named "William E."
10. That on January 31, 2007, the "William E" was in dry dock at Caddell Dry Dock and Repair Co., Inc.
11. That on January 31, 2007, the "William E" was in dry dock #3 at Caddell Dry Dock and Repair Co., Inc.
12. That on January 31, 2007, **DONJON**, owned a vessel or structure located at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York
13. That on January 31, 2007, **DONJON**, maintained a vessel or structure located at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
14. That on or prior to January 31, 2007, the "William E" was transported to Caddell Dry Dock and Repair Co., Inc., on Staten Island for renovation, refitting, painting and/or repair.
15. That on or prior to January 31, 2007, **DONJON**, was hired and/or retained to act as a contractor for the refitting, renovation, painting, repair and/or alteration

of a vessel known as "William E" at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

16. That on or prior to January 31, 2007, **DONJON**, entered into an agreement and contract by which **CADDELL DRY DOCK AND REPAIR CO, INC.** was to provide certain work, labor, painting, renovation and/or repairs with respect to certain renovation, alterations and/or repairs of its vessel, the "William E".

17. That on or prior to January 31, 2007, **DONJON** entered into an agreement and contract by which **CADDELL DRY DOCK AND REPAIR CO., INC.** was to provide certain work, labor, painting, renovation and/or repairs to a vessel it owned at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

18. That on or prior to January 31, 2007, **DONJON** retained a contractor to perform renovation, painting, repair and/or alteration of a vessel at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

19. That on or prior to January 31, 2007, **DONJON** retained **CADDELL DRY DOCK AND REPAIR CO., INC.** to provide work, labor and/or services at the vessel at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

20. That at all times hereinafter mentioned, and on, or prior to January 31, 2007, **DONJON** hired and/or retained **CADDELL DRY DOCK AND REPAIR CO., INC.** pursuant to a written contract and/or agreement a contractor.

21. That on January 31, 2007, renovation, refitting, painting, alterations and/or repairs were being performed on the "William E" at Dry Dock 3 located at the premises of **CADDELL DRY DOCK AND REPAIR CO., INC.**

22. That on January 31, 2007, renovation, painting, repair and/or alterations were being performed on a vessel known as "William E" at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

23. That on January 31, 2007, plaintiff was engaged in the performance of renovation, refitting, painting, repair and/or alterations on said vessel.
24. That the Defendant, its agents, servants and/or employees had the duty to provide the Plaintiff with a safe place to work.
25. That the Defendant, its agents, servants and/or employees had the non-delegable duty to see that the work site was kept reasonably safe and free of dangers and hazards to those workers lawfully thereat.
26. That on January 31, 2007, while plaintiff **DENNIS KIRBY**, was lawfully and carefully working on a ladder on said vessel, he was caused to fall from said ladder by reason of the negligence and/or violation of statute of the defendant, its agents, servants and/or employees in the ownership, operation, direction, supervision, possession, control, construction, repair, rehabilitation, refitting, painting and/or alteration of the said vessel sustaining the injuries hereinafter alleged.
27. That the defendant, its agents, servants and/or employees were negligent, reckless and careless in the ownership, operation, repair, control, possession, supervision, direction, construction, inspection, management, renovation, rehabilitation, refitting and/or alteration of the said vessel in that they failed to provide the plaintiff with a safe place to work; failed to provide the plaintiff with a hazard-free work place; failed to provide the plaintiff with proper and safe elevated working surfaces, scaffolds and ladders, so fixed, secured and/or maintained and braced so as to prevent the plaintiff from falling from same; failed to provide the plaintiff with proper and approved safety devices so placed, fixed and/or secured so as to afford proper protection to the plaintiff working thereat; violated the applicable provisions of the Labor Law of the State of New York, the Industrial Code of the State of New York and the provisions of the Occupational Safety & Health Administration as they pertain to construction;

failed to inspect the work areas on the date of the accident and prior thereto to see that the elevated working surfaces, scaffolds and ladders were safe; and, failed to provide the plaintiff with any safety devices to prevent plaintiff from falling from said elevated working surfaces, scaffolds and ladders.

28. That the defendant, its agents, servants and/or employees had actual and/or constructive notice of the dangerous and defective conditions existing upon the work site.

29. That the accident and the injuries resulting therefrom were caused solely and wholly by reason of the negligence of the defendant, its agents, servants and/or employees without any fault, want of care or culpable conduct on the part of the plaintiff contributing thereto.

30. That by reason of the foregoing, the plaintiff has been rendered sick, sore, lame maimed and disabled and so remains. That he has been unable to attend to his usual vocation and activities and that he has been obliged to expend and will expend in the future, sums of money for medical aid and attention, all to his damage in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF DENNIS KIRBY**

31. Plaintiff, **DENNIS KIRBY**, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "29" together with the same force and effect as though same were more fully set forth at length herein.

32. That on January 31, 2007, there existed in full force and effect within the State of New York, Sections 200, 240(1) and 241(6) of the Labor Law of the State of New York.

33. That the defendant had the duty to comply with the provisions of sections 200, 240(1), and 241(6) of the Labor Law of the State of New York.

34. That said defendant violated Sections 200, 240(1) and 241(6) of the Labor Law

of the State of New York.

35. That on January 31, 2007, there existed Rule 23 of the Industrial Code of the State of New York.

36. That the defendant had the duty to comply with the provisions of Rule 23 of the Industrial Code of the State of New York.

37. That by reason of the negligence of the defendant aforesaid, the defendant violated Rule 23 of the Industrial Code of the State of New York.

38. That by reason of the foregoing, the plaintiff has been rendered sick, sore, lame maimed and disabled and so remains. That he has been unable to attend to his usual vocation and activities and that he has been obliged to expend and will expend in the future, sums of money for medical aid and attention, all to his damage in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF DENNIS KIRBY**

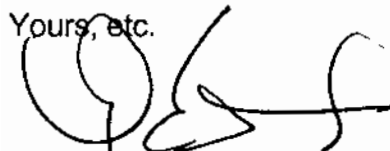
39. Plaintiff, DENNIS KIRBY, repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "38" together with the same force and effect as though same were more fully set forth at length herein.

40. Plaintiff asserts a violation of 33 U.S.C. 905(b) and 33 U.S.C. 933 and asserts negligence against defendant based on federal and state common law negligence.

WHEREFORE, the plaintiff **DENNIS KIRBY** demands judgment against the defendant in an amount that exceeds the jurisdictional limits of all lower courts on each cause of action, with costs, interest and disbursements.

Dated: New York, New York
January 3, 2008

Yours, etc.

A handwritten signature in black ink, appearing to be 'Mark N. Edwards', written over a horizontal line.

MARK N. EDWARDS(ME7106)
GORAYEB & ASSOCIATES, P.C.
Attorney for Plaintiff
DENNIS KIRBY
100 William Street
New York, New York 10038
(212) 267-9222
File#/7401 - LLMU

ATTORNEY'S VERIFICATION

CHRISTOPHER J. GORAYEB, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a member of the law firm of GORAYEB & ASSOCIATES, P.C., attorney of record for plaintiff, I have read the annexed **PROPOSED AMENDED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files. The reason this verification is made by me and not Plaintiff is that Plaintiff does not reside in the county wherein the attorney for the plaintiff maintain its offices.

DATED: New York, New York
January 3, 2008

A handwritten signature in black ink, appearing to read 'M. Edwards', written over a horizontal line.

MARK H. EDWARDS

STATE OF NEW YORK

SS.: **AFFIDAVIT OF SERVICE**

COUNTY OF NEW YORK

I, MARK H. EDWARDS, being duly sworn, depose and say: I am not a party to the action, am over 18 years of age, and reside in the County of Mercer, State of New Jersey.

On January 03, 2008, I served the within **NOTICE OF CROSS-MOTION WITH OPPOSITION TO PETITIONER'S SUMMARY JUDGMENT MOTION, ATTORNEY'S AFFIDAVIT, AFFIDAVIT OF DENNIS KIRBY, EXHIBITS AND MEMORANDUM OF LAW** to the Federal Express office location at 100 William Street, New York, New York, for overnight delivery service on the following attorneys:

RUBIN, FIORELLA & FRIEDMAN, LLP
292 Madison Avenue
New York, New York 10017



MARK H. EDWARDS

Sworn to before me on
January 03, 2008

Notary Public

CHRISTOPHER A. ...
NOTARY PUBLIC, State of New York
No. 31-4958600
Qualified in New York County
Commission Expires Nov. 15, 2009

FedEx
Tracking
Number

8594 6326 0743

Form
ID No.

0215

1 From Please print and press hard
Date 1/3/08 Sender's FedEx
Account Number 2178-7586-2

Sender's
Name _____ Phone (212) 267-9222

Company GORAYEB ASSOCIATES, PC

Address 100 WILLIAM ST RM 1205

Dept./Floor/Suite/Room

City NEW YORK State NY ZIP 10038-5095

2 Your Internal Billing Reference Dennis Kirby
First 24 characters will appear on invoice

3 To
Recipient's
Name _____ Phone () _____

Company RUBIN, FIORELLA & FRIEDMAN, LLP

Recipient's
Address 292 Madison Avenue

We cannot deliver to P.O. boxes or P.O. ZIP codes

Dept./Floor/Suite/Room

Address _____

To request a package to hold at a specific FedEx location, print FedEx address here.

City New York State NY ZIP 10017

0348891263

Find drop-off locations at fedex.com

4a Express Package Service

☒ **FedEx Priority Overnight**
Next business morning.* Friday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

☐ **FedEx Standard Overnight**
Next business afternoon.*
Saturday Delivery NOT available

☐ **Packages up to 150 lbs.**
FedEx First Overnight
Earliest next business morning
delivery to select locations.
Saturday Delivery NOT available

☐ **FedEx 2Day**
Second business day.* Thursday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.
FedEx Envelope rate not available. Minimum charge. One-pound rate.

☐ **FedEx Express Saver**
Third business day.*
Saturday Delivery NOT available

* To most locations

4b Express Freight Service

☐ **FedEx 10Day Freight***
Next business day** Friday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

☐ **FedEx 2Day Freight**
Second business day** Thursday
shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

☐ **Packages over 150 lbs.**
FedEx 3Day Freight
Third business day**
Saturday Delivery NOT available

* Call for Confirmation

** To most locations

5 Packaging

☐ **FedEx
Envelope***

☒ **FedEx Pak***
Includes FedEx Small Pak,
FedEx Large Pak, and FedEx Sturdy Pak

☐ **FedEx
Box**

☐ **FedEx
Tube**

☐ **Other**
* Declared value limit \$500

6 Special Handling

☐ **SATURDAY Delivery**
NOT Available for
FedEx Standard Overnight,
FedEx First Overnight, FedEx Express
Saver, or FedEx 3Day Freight.

☐ **HOLD Weekday**
at FedEx Location
NOT Available for
FedEx First Overnight.

☐ **HOLD Saturday**
at FedEx Location
Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.

Does this shipment contain dangerous goods?

☒ **No** ☐ **Yes**
As per assigned
Shipper's Declaration

☐ **Yes**
Shipper's Declaration
not required.

☐ **Dry Ice**
Dry Ice, 3, UN 1845

☐ **Cargo Aircraft Only**

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment Bill to:

☒ **Sender**
FedEx bill for Section
7 will be billed.

☐ **Recipient** ☐ **Third Party** ☐ **Credit Card** ☐ **Cash/Check**

FedEx Acct. No.
Credit Card No.Exp.
Date

Total Packages

Total Weight

Total Declared Value*

\$ 00

To our liability limited to \$100 unless you declare a higher value. See back for details. By using this form you agree to the service conditions on the back of this form and on the current FedEx Service Guide, including terms that limit our liability.

8 NEW Residential Delivery Signature Options

If you require a signature, check Direct or Indirect

☐ **No Signature
Required**

☐ **Direct Signature**
As noted on label

☐ **Indirect Signature**
To be noted on label at

☐ **Signature Required**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)

of

DONJON MARINE CO., INC., as
Owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

Petitioner.

**NOTICE OF CROSS-MOTION WITH OPPOSITION TO PETITIONER'S SUMMARY
JUDGMENT MOTION, ATTORNEY'S AFFIDAVIT, AFFIDAVIT OF DENNIS KIRBY
AND EXHIBITS**

GORAYEB & ASSOCIATES, P.C.

Attorney for Respondent

DENNIS KIRBY

100 William Street, Ste. 1205

New York, New York 10038

(212) 267-9222

FILE NO. 7401 - LL

Dated: New York, New York
January 03, 2008



Mark H. Edwards (ME7106)